

CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Criminal Jail Appeal No-507 of 2022

Lutaf Ali

Vs.

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HIGH COURT OF SINDH

Composition of Bench. Single.


Mr. Justice Mohammad Karim Khan Agha

Dates of hearing : 15-10-2024

Decided on : 22-10-2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

خدمت سندھ ہائی کورٹ، کراچی
محترم سینیٹر سپریمینٹنڈنٹ سنٹرل جیل، حیدر آباد

عنوان: کمرشل جیل اپیل

لطف علی ولد علی محمد سراج ملزم/اپیلر:

بہتقابل

سرکار

Sessions Case No. 145/2019

Crime No. 03/2019

Police Station, Mirpur Bathoro

Under Section 302, P.P.C

CRIMINAL JAIL APPEAL

ایڈیشنل سیشن جج - I/ ماڈل کمرشل ٹرائیل کورٹ، ٹھٹہ کی،

بتاریخ 26-07-2022 کی متنازعہ ججمنٹ سے قطعی غیر متفق اور غیر مطمئن

ہوتے ہوئے اپیل دائر کی جاتی ہے۔ متنازعہ ججمنٹ کے مطابق

ملزم/اپیلر کنندہ کو سیشن کیس نمبر 145/2019، کرائم نمبر 03/2019 قتل

میرپور بٹھورو میں زیر قلم PPC (b) 302 کے تحت دو بار عرصہ اور خوف

جزیہ Rs. 2,00,000/- (دو لاکھ روپے) عدم ادائیگی پر مزید چھ ماہ قید

کی سزا صادر فرمائی، C.P.C. 382-B/0 کا نفاذ سے مستفید اور تمام سزائیں

ایک ساتھ گزارنے کا حکم دیا گیا۔

- جیسا کہ سائل ایک سب اور رزرویشن شخص ہے جسے مذکورہ

میں کا ذباہ جیسا یا گیا ہے۔

- جیسا کہ مقدمہ میں پیش کیے گئے سب گواہان صوابی ہیں جنہوں نے سچے

مدعی کے کہنے پر جھوٹے گواہی دی۔

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learned Additional Sessions Judge, Sujawal. Subsequently, on
03.04.2020, the R&Ps. of this case was received to this Court as Model

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IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRL. JAIL APPEAL NO.507 OF 2022

Appellant: Lutaf Ali s/o. Ali Muhammad Mallah
through Mr. Musharraf Azhar, Advocate.

Respondent: The State through Mr. Muhammad Iqbal
Awan, Addl. Prosecutor General, Sindh and
Mr. Mumtaz Ali Shah, Assistant Prosecutor
General Sindh.

Date of Hearing: 15.10.2024

Date of Announcement: 22.10.2024

J U D G M E N T

Mohammad Karim Khan Agha, J: Appellant Lutaf Ali was tried in the Model Criminal Trial Court/1st Additional Sessions Judge, Thatta in Sessions Case No. 145 of 2019 in respect of Crime No. 03 of 2019 under Section 302 P.P.C. registered at P.S. Mirpur Bathoro and after a full-fledged trial vide judgment dated 26.07.2022 he was convicted under section 302 (b) P.P.C. and sentenced to suffer imprisonment for life for two counts of murder. He was also directed to pay Rs.2,00,000/- as compensation to the legal heirs of deceased in terms of Section 544-A Cr.PC against both the convictions. Such compensation shall be recoverable as arrears of land revenue; however in case of default in payment of compensation, the appellant shall undergo further R.I. for six months. The benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the case as per FIR are that on 02.01.2019 at about 1340 hours near main gate of Bathoro High School, Taluka Mirpur Bathoro, District Sujawal appellant Lutaf Ali Mallah caused death of his mother-in-law Mst. Tasleem by causing her dagger / knife injuries in her abdomen and other parts of her body over the matrimonial dispute with his wife Mst. Suraya, at the time of incident

deceased Mst. Tasleem was pregnant of four months. Hence the aforesaid FIR was lodged.

3. After usual investigation, police submitted formal challan of the case before the concerned court. After completing necessary formalities, learned trial court framed charge against the accused, to which he pleaded not guilty and claimed trial.

4. At trial, in order to prove its case, the prosecution examined 9 witnesses and exhibited numerous documents and other items. The statement of the accused / appellant was recorded under Section 342 Cr.P.C. in which he denied the prosecution allegations leveled against him and claimed his false implication in the commission of alleged crime. However, neither he examined himself on oath in disproof of the prosecution case nor led any evidence in his defence.

5. On conclusion of the trial, learned trial court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the accused / appellant vide impugned judgment, as set out earlier in this judgment, hence the appellant has preferred this appeal against his conviction.

6. The evidence produced before the trial court finds an elaborate mention in the impugned judgment, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that he is innocent of any wrong doing and that he has been falsely implicated in this case by the complainant hence the delay in lodging the FIR; that the evidence of the eye witnesses cannot be safely relied upon as they are put up witnesses; that there are material contradictions in the evidence of the witnesses which renders their evidence unreliable; that the appellants confession before the judicial magistrate was retracted and was not made voluntarily and as such it cannot be safely relied upon; that the alleged crime weapon being the knife/dagger/churri was foisted upon the appellant by the police and that for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions learned counsel for the appellant has placed reliance on the cases of

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Habib Ahmed vs. The State (2020 YLR 238) and **Muhammad Akram vs. The State** (2009 SCMR 230).

8. On the other hand, learned Additional Prosecutor General Sindh has have fully supported the impugned judgment. In particular, he contended that any delay in lodging the FIR had been fully explained; that the evidence of the eye witnesses to the murder could be safely relied upon; that the retracted judicial confession of the appellant was made voluntarily with the object of telling the truth and as such it could be safely relied upon; that the eye witnesses evidence was supported/ corroborated by the medical evidence; that the appellant himself volunteered to produce the crime weapon / knife before the police which was recovered by the police on his pointation and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of his contentions he placed reliance on the cases of **Muhammad Imran vs. The State** (2021 SCMR 69), **Zulfiqar Ahmad and another vs. The State** (2011 SCMR 492), **Khalid Mehmood vs. The State** (2017 SCMR 201), **Ayyaz Ahmed vs. Allah Wasaya and others** (2004 SCMR 1808) and **Muhammad Amin vs. The State** (PLD 2006 Supreme Court 219).

9. I have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence, the blood stained earth recovered at the scene of the crime I find that the prosecution has proved beyond a reasonable doubt that on 02.01.2019 at about 1340pm Ms Tasleem Mallah (the deceased) was murdered by a sharp cutting instrument in front of the main gate of high school Mirpur Bathoro Taluka Mirpur Bathoro District Sujawal.

11. The only question left before me therefore is whether it was the appellant who murdered the deceased with a sharp cutting instrument at the said time, date and location?

12. After my reassessment of the evidence I find that the prosecution

has proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) That admittedly the FIR was lodged after a delay of one day however I find that this delay in lodging the FIR has been fully explained as the complainant first had to take his deceased wife to the hospital who at that time was seriously injured but alive so his priority was to take her immediately to Mirpur Bathoro hospital where unfortunately she died and her body was then taken to Sujawal Hospital where a post mortem was performed then he had to make the funeral arrangements while being in a state of shock and once the funeral had been carried out the FIR was immediately lodged. Even otherwise, the police had been informed by the complainant about the incident and in particular that the appellant had murdered the complainant's wife by knife within an hour of the incident as per PW 7 Iman Bux who was the IO of the case as is confirmed by the entry exhibited at 10/A at P.165 of the paper book and as such based on the particular facts and circumstances of this case I do not find that the delay in lodging the FIR is fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

(b) That the appellant is named in both the entry at Exhibit 10/A which was lodged with an hour of the incident and the FIR with a specific role.

(c) I find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether I believe their evidence especially in connection with the correct identification of the appellant whose evidence I shall consider in detail below;

(i) **Eye witness PW 1 Dhani Bux. He is the complainant and the husband of the deceased.** According to his evidence on 02.01.2019 at about 1.40pm he was returning from hospital with his wife/deceased when he met PW Lal Bux, who was the brother of his wife/deceased, at the gate of the hospital who accompanied them home. When, however, they reached the gate of high school Mirpur Bathoro he came across his son in law/accused. The accused asked his wife/deceased where his wife was who was the complainant's daughter. When his wife/deceased replied that he did not know the accused took out a knife and caused blows to his wife's/deceased abdomen and other parts of her body. After raising cries the accused ran away. The complainant took his injured wife to Taluka hospital Mirpur Bathoro and then reported the matter to the police. His wife/deceased died in hospital and was sent to Taluka Hospital Shujawal for her post mortem.

This eye witness is related to the deceased and also to the accused however **no enmity or dispute has been proven** between this eye witness and the appellant and thus the mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness also **knew the appellant before** the incident which took place at 1.40pm in broad day light as the appellant was his son in law. The incident went on for about 5 minutes and the eye witness was close to the incident and would have got a good look at the appellant who he already knew. Thus, there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant. The appellant's presence at the scene of the incident is corroborated by PW 2 Lal Bux and PW 3 Gul Soho Ali who are also eye witnesses. Admittedly this eye witness at the time of the incident was old, infirm and suffered from impaired vision at the time of the incident but there is no way that he could have failed to identify the appellant who was a few feet away from him in broad day light who he could even recognize by voice being his son in law. Importantly he reported the incident to the police within an hour of the incident naming the appellant as the person who murdered his wife by knife after dropping her off at the hospital.

This eye witness was not a chance witness as he was the husband of the deceased and had every reason to be with her at the time of the incident. As he was infirm and old it was but natural that his wife/deceased would have accompanied him to the hospital. He was unable to intervene as the incident happened quickly as he was old, infirm and unarmed. It has also come in evidence that the appellant after having an argument with his wife who had left him thought the deceased knew where she was and was refusing to tell him and hence his motive for attacking her. As mentioned earlier he reported the incident immediately to the police in detail and also lodged his FIR with relative promptitude based on the particular facts and circumstances of the case which was not materially improved upon during the course of his evidence. He named the appellant in his FIR with a specific role along with the other eye witnesses. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellant who murdered his wife/deceased.

I can convict on the evidence of this eye witness alone though it would be of assistance by way of caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of this eye witness to be of good quality and believe the same. **In this case however there are more than one eye witness.**

(ii) **Eye witness PW 2 Lal Bux. He is the brother in law of the complainant and the deceased is his real sister.** According to his evidence on 02.01.2019 he met the complainant and his sister/deceased at the gate of taluka hospital Mirpur Bathoro. He corroborates the evidence of the complainant in all material respects and also mentions PW Gul Soho who was sitting on one side.

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This witness was not a chance witness as he had every reason to accompany his sister and her husband home from the hospital. He is named in police entry being exhibit 10/A which was lodged within hours of the incident and also in the relatively promptly lodged FIR as an eye witness. He gave his S.161 Cr.PC statement within one day of the incident which was not materially improved upon during the course of his evidence. He knew the appellant from before as he was related to him and hence there was no need for an identification parade. It was a day light incident and he got a good look at the appellant from close range and as such there is no case of mistaken identity. He gave his evidence in a straight forward manner and was not dented despite a lengthy cross examination. I find his evidence to be trust worthy reliable and confidence inspiring and believe the same especially in respect of the correct identification of the appellant. The same considerations apply to his evidence to that of the complainant.

(iii) **Eye witness PW 3 Gul Soho. He is an independent witness** who knew the complainant, his wife/deceased and her brother PW Lal Bux as they all used to live in the same village. According to his evidence he had gone to the NADRA office in Mirpur Bathoro and when he reached the main gate of the high school on 02.01.2019 at 1.40pm he saw the complainant, his wife/deceased and PW Lal Bux when after hearing cries he saw the accused cause knife blows to the deceased. He then helped take the deceased to hospital.

This witness had no enmity or ill will with the appellant and had no reason to implicate him in a false case. He gave his S.161 Cr.PC statement a day after the incident which was not materially improved on during his evidence. It was a day light incident so he would have seen the incident clearly. It is unclear how well he knew the appellant and how far away he might have been from the incident and he might have been a chance witness however he gave his evidence in a straight forward manner and was not dented during a lengthy cross examination. As such taking all the above into consideration I place some weight on his evidence but lesser than that of the other eye witnesses especially in terms of correct identification of the appellant.

Thus, based on my believing the evidence of the 2 eyewitnesses and a third one to a lesser extent what other evidence/material supportive/corroborative or other wise is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of Muhammad Waris v The State (2008 SCMR 784)

(d) Three days after his arrest the appellant confessed to the murder before the police and he took the police on his pointation to the place where he had hidden the murder weapon which was a place which he only knew about. That it has not been proven through evidence that any particular police witness had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case for instance by foisting the knife on him and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such I rely on the police witness evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State (2020 SCMR 474)**.

(e) Three days after his arrest and one day after the recovery of the murder weapon on his pointation the appellant was brought before a judicial magistrate where he made a judicial confession to the murder of the deceased which is reproduced below for ease of reference;

Section 164 Cr.PC Statement (Confession) of the appellant before PW 9 Muhammed Amir judicial magistrate in material part;

"Question; What do you have to say

Answer: I have to confess that I have committed this murder of my mother in law because she wanted to sell my wife. She has already sold two of her daughters. She has sold them to different persons. It was her business. She used to say that she will sell my wife and what will I do. She threatened to kill my daughter when she was born. She used to ask me to leave her daughter. Many people used to threaten us. My brother Khan Muhammad had given money to my mother in law at the time of delivery of my daughter to take my wife to Karachi but she hid the money. My wife told me that her mother has asked her to kill my baby when she saw her first time and then they will take my wife. My mother in law sold her two daughters to Thaeems. They wanted to take my wife too. Thaeems threatened my wife that they will take her. My mother in law was in connivance with them."

Although this confession was retracted at trial it is well settled by now that I can rely on this retracted judicial confession as against its maker if I find that (a) it was made voluntarily and (b) it was made with the object of telling the truth based on the prosecution case and that even minor irregularities in recording the confession before the judicial magistrate can be ignored. In this respect reliance is placed on the cases of **Ch. Muhammad V Yaqoob V The State** (1992 SCMR 1983), **Bahadur V State** (PLD 1996 SC 336) **Muhammad Amin V The State** (PLD 2006 SC 219), **Manjeet Singh V State** (PLD 2006 SC 30) and **Azeem Khan V Mujahid Khan** (2016 SCMR 274).

In this case the confession fully ties in with and corroborates the eye witness evidence. There is no evidence that the confession was anything but voluntarily made with the object of telling the truth. **Thus, I believe and place reliance on the appellant's retracted judicial confession especially as there were no material procedural irregularities in the manner in which the appellant's confession was recorded** in that he was produced before a magistrate and was aware of this fact, his hand cuffs were removed, no police men was in the room, he was given adequate reflection time, he was told that his confession could be used against him in evidence in a court of law, he was checked for evidence of mal treatment and none was found, he was not handed back to the police after he confessed and was handed over to judicial custody after making his confession.

(f) That it does not appeal to logic, commonsense or reason that a husband and brother would let the real murderer of their wife/sister get away scott free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of

Muhammad Ashraf V State (2021 SCMR 758)

(g) That the medical evidence and medical reports fully support the eye-witness/ prosecution evidence in that the deceased received at least 3 stab wounds to the abdomen and 2 other incised injuries which lead to her death.

(h) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the complainant and his wife/deceased were returning home from the hospital with PW Lal Bux to the appellant confronting the deceased over hiding her daughter/his wife and on her denial he viciously stabbing her with a knife to him running away to the arrest of the appellant to the recovery of the knife on his pointation to his confession before the judicial magistrate.

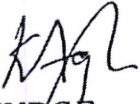
(i) That the motive as per FIR and evidence on record is that the appellant thought that the deceased was hiding his wife from him.

(j) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case as per cross examination by the appellant is that the deceased died on account of an accident which is completely contrary to the medical evidence and the eye witness evidence and his confession. He did not give evidence on oath or call any DW in support of his defence case. Thus, for the reasons mentioned above I disbelieve the defence case in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

13. Thus, based on the above discussion I have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt as per the charge.

14. It is noted that in the impugned judgment the appellant was convicted of two counts of murder. One in respect of the deceased and one in respect of her unborn child. Since the appellant was not put on notice about the murder of an unborn child in the charge which only came to light during the course of the medical evidence I acquit him of the charge of the murder of the unborn child but convict him and maintain his sentence for the murder of the deceased and for one set of compensation to the legal heirs as set out in the impugned judgment.

15. As such the appeal is dismissed except as modified by his acquittal of the murder of the unborn child.


JUDGE 22/10/24